

REMARKS

The Office Action mailed March 6, 2009 has been carefully considered and the following response prepared.

RESTRICTION REQUIREMENT

At page 2 of the Office Action, the Examiner restricted the claims under 35 USC 121 and 372 into the following groups:

Group I – claims 1-15 drawn to an isolated nucleic acid having endosperm specific gene expression promoter activity;

Group II – claims 17-26 and 28-30 drawn to an isolated nucleic acid encoding a BETL protein, plants and cells transformed therewith and methods therefor; and

Group III – claim 27 – drawn to an isolated BETL protein comprising the amino acid sequence of SEQ ID NO: 54.

The Examiner alleged that the inventions listed as Groups I-III do not related to a single general inventive concept under PCT Rule 13.1 because they lack the same or corresponding special technical feature.

Additionally, the Examiner restricted the nucleic acid sequences. The Examiner required Applicants to elect a) one promoter sequence of SEQ ID NO: 1, 2, 3, or 62 if the invention of Group I is elected; or b) one coding sequence of SEQ ID NO: 6, 8, 10, 12, 14, 16 or 53 and one of the respective amino acid sequences of SEQ ID NO: 5, 7, 9, 11, 13, 15 or 58 if the invention of Group II is elected.

Applicants elect the invention of Group I (claims 1-15) for prosecution with traverse. Applicants also elect SEQ ID NO: 1 for prosecution with traverse. Claims 1-15 read on the elected invention. Applicants respectfully submit that it would not be an undue burden on the Examiner to search and examine SEQ ID NO: 1, 2, 3 and 62 in the same application. SEQ ID NO: 1, 2, 3 and 62 are structurally and functionally related. The sequences are endosperm specific promoters, and share the common nucleotide pattern shown in SEQ ID NO: 57. The searches for the sequences would therefore be the same or substantially overlap.

An early and favorable Office Action on the merits is respectfully requested.

The Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 03-2775, under Order No. 11887-00008-US. A duplicate copy of this paper is enclosed.

Dated: May 6, 2009

Respectfully submitted,

Electronic signature: /Liza D. Hohenschutz/
Liza D. Hohenschutz
Registration No.: 33,712
CONNOLLY BOVE LODGE & HUTZ LLP
1007 North Orange Street
P. O. Box 2207
Wilmington, Delaware 19899-2207
(302) 658-9141
(302) 658-5614 (Fax)
Attorney for Applicant